

LEGISLATURE OF NEBRASKA

ONE HUNDREDTH LEGISLATURE

FIRST SESSION

**LEGISLATIVE BILL 167**

Introduced By: Revenue Committee; Janssen, 15, Chairperson; Burling, 33;  
Cornett, 45; Dierks, 40; Langemeier, 23; Raikes, 25

Read first time: January 8, 2007

Committee: Revenue

A BILL

1 FOR AN ACT relating to revenue and taxation; to amend sections  
2 77-5003 and 77-5011, Reissue Revised Statutes of Nebraska,  
3 and sections 25-1901, 77-1504, 77-1507.01, 77-5016, 77-5017,  
4 77-5020, 77-5022, 77-5023, 77-5026, and 77-5028, Revised  
5 Statutes Cumulative Supplement, 2006; to change and  
6 eliminate provisions relating to appeals, equalization, the  
7 Tax Equalization and Review Commission, and assessor  
8 certification; to harmonize provisions; to repeal the  
9 original sections; and to outright repeal section 77-5014,  
10 Reissue Revised Statutes of Nebraska.

11 Be it enacted by the people of the State of Nebraska,

1           Section 1. Section 25-1901, Revised Statutes Cumulative  
2 Supplement, 2006, is amended to read:

3           25-1901. A judgment rendered or final order made by any  
4 tribunal, board, or officer exercising judicial functions and inferior  
5 in jurisdiction to the district court may be reversed, vacated, or  
6 modified by the district court, except that the district court shall  
7 not have jurisdiction over (1) appeals from a juvenile court as  
8 defined in section 43-245, (2)~~or~~ appeals from a county court in  
9 matters arising under the Nebraska Probate Code or the Nebraska  
10 Uniform Trust Code, in matters involving adoption or inheritance tax,  
11 or in domestic relations matters, or (3) appeals within the  
12 jurisdiction of the Tax Equalization and Review Commission

13           Sec. 2. Section 77-1504, Revised Statutes Cumulative  
14 Supplement, 2006, is amended to read:

15           77-1504. The county board of equalization may meet on or  
16 after June 1 and on or before July 25, or on or before August 10 if  
17 the ~~county~~ board has adopted a resolution to extend the deadline  
18 for hearing protests under section 77-1502, to consider and correct  
19 the current year's assessment of any real property which has been  
20 undervalued or overvalued. The board shall give notice of the assessed  
21 value to the record owner or agent at his or her last-known address.

22           The county board of equalization in taking action pursuant  
23 to this section may only consider the report of the county assessor  
24 pursuant to section 77-1315.01.

25           Action of the county board of equalization pursuant to this  
26 section shall be for the current assessment year only.

27           The action of the county board of equalization may be

1 protested to the board within thirty days after the mailing of the  
2 notice required by this section. If no protest is filed, the action of  
3 the board shall be final. If a protest is filed, the county board of  
4 equalization shall hear the protest in the manner prescribed in  
5 section 77-1502, except that all protests shall be heard and decided  
6 on or before September 15 or on or before September 30 if the county  
7 has adopted a resolution to extend the deadline for hearing protests  
8 under section 77-1502. Within seven days after the county board of  
9 equalization's final decision, the county clerk shall mail to the  
10 protester written notice of the decision. The notice shall contain a  
11 statement advising the protester that a report of the decision is  
12 available at the county clerk's or county assessor's office, whichever  
13 is appropriate, and that a copy of the report may be used to complete  
14 an appeal to the Tax Equalization and Review Commission.

15 The action of the county board of equalization upon a  
16 protest filed pursuant to this section may be appealed to the Tax  
17 Equalization and Review Commission on or before October 15 or on or  
18 before October 30 if the county has adopted a resolution to extend the  
19 deadline for hearing protests under section 77-1502.

20 Sec. 3. Section 77-1507.01, Revised Statutes Cumulative  
21 Supplement, 2006, is amended to read:

22 77-1507.01. Any person otherwise having a right to appeal  
23 may petition the Tax Equalization and Review Commission in accordance  
24 with section 77-5013, on or before December 31 of each year, to  
25 determine the actual value, special value, or recapture value of real  
26 property for that year if a failure to give notice prevented timely  
27 filing of a protest or appeal provided for in sections 77-1501 to

1       ~~77-1507.~~ 77-1510.

2               Sec. 4. Section 77-5003, Reissue Revised Statutes of  
3 Nebraska, is amended to read:

4               77-5003. (1) The Tax Equalization and Review Commission is  
5 created. The Tax Commissioner has no supervision, authority, or  
6 control over the actions or decisions of the commission relating to  
7 its duties prescribed by law. The commission shall have three  
8 commissioners, one from each congressional district, and beginning on  
9 and after January 1, 2002, the commission shall have four  
10 commissioners. One at-large commissioner shall be appointed in  
11 addition to the commissioners representing the congressional  
12 districts. All commissioners shall be appointed by the Governor with  
13 the approval of a majority of the members of the Legislature.

14               (2) The term of the commissioner from district 1 expires  
15 ~~two years after the first appointment under this section,~~ January  
16 1, 2010, the term of the commissioner from district 2 expires ~~four~~  
17 ~~years after the first appointment under this section,~~ January 1,  
18 2012, and the term of the commissioner from district 3 expires ~~six~~  
19 ~~years after the first appointment under this section.~~ January 1,  
20 2008. The ~~initial~~ term of the at-large commissioner expires on  
21 January 1, 2008. After the ~~initial~~ terms of the commissioners are  
22 completed as provided in this section, each subsequent term shall  
23 be for six years beginning and ending on January 1 of the applicable  
24 year. Vacancies occurring during a term shall be filled by appointment  
25 for the unexpired term. Upon the expiration of his or her term of  
26 office, a commissioner shall continue to serve until his or her  
27 successor has been appointed.

1           (3) The Governor shall designate one commissioner, who is an  
2 attorney admitted to practice before the Nebraska Supreme Court, to  
3 serve as the chairperson of the commission from January 1, 2002,  
4 through December 31, 2003. Beginning on January 1, 2004, the  
5 commission shall designate pursuant to rule and regulation its  
6 chairperson and vice-chairperson on a two-year, rotating basis among  
7 the commissioners who are attorneys admitted to practice before the  
8 Nebraska Supreme Court.

9           (4) A commissioner may be removed by the Governor for  
10 misfeasance, malfeasance, or willful neglect of duty or other cause  
11 after notice and a public hearing unless notice and hearing are  
12 expressly waived in writing by the commissioner.

13           Sec. 5. Section 77-5011, Reissue Revised Statutes of  
14 Nebraska, is amended to read:

15           77-5011. The chairperson may call special meetings of the  
16 commission at such times as its business requires. The chairperson may  
17 also administer oaths and affirmations and sign all orders,  
18 certificates, and process in the name of the commission. The  
19 chairperson shall attest all orders, certificates, and process with  
20 the official seal of the commission. In the absence of the chairperson  
21 the vice-chairperson may perform the duties of the chairperson.  
22 Orders, certificates, and process under the official seal of the  
23 commission may be enforced by the district court for Lancaster  
24 County

25           Sec. 6. Section 77-5016, Revised Statutes Cumulative  
26 Supplement, 2006, is amended to read:

27           77-5016. Any hearing or proceeding of the commission shall

1 be conducted as an informal hearing unless a formal hearing is granted  
2 as determined by the commission according to its rules and  
3 regulations. In any hearing or proceeding heard by the commission or a  
4 panel of commissioners:

5 (1) The commission may admit and give probative effect to  
6 evidence which possesses probative value commonly accepted by  
7 reasonably prudent persons in the conduct of their affairs excluding  
8 incompetent, irrelevant, immaterial, and unduly repetitious evidence  
9 and shall give effect to the privilege rules of evidence in sections  
10 27-501 to 27-513 but shall not otherwise be bound by the usual  
11 common-law or statutory rules of evidence except during a formal  
12 hearing. Any party to an appeal filed under section 77-5007 may  
13 request a formal hearing by delivering a written request to the  
14 commission not more than thirty days after the appeal is filed. ~~The~~  
15 ~~request shall include the requesting party's agreement to be liable~~  
16 ~~for the payment of costs incurred and upon any appeal or review,~~  
17 ~~including the cost of court reporting services which the requesting~~  
18 ~~party shall procure for the hearing. The commission shall be bound by~~  
19 ~~the rules of evidence applicable in district court in any formal~~  
20 ~~hearing held by the commission. All costs of a formal hearing shall~~  
21 ~~be paid by the party or parties against whom a final decision is~~  
22 ~~rendered; The requesting party shall be liable for the payment of~~  
23 ~~fees and costs of a court reporter pending a final decision. The~~  
24 ~~commission shall be bound by the rules of evidence applicable in~~  
25 ~~district court in any formal hearing held by the commission. Fees and~~  
26 ~~costs of a court reporter shall be paid by the party or parties~~  
27 ~~against whom a final decision is rendered, and all other costs shall~~

1 be allocated as the commission may determine;

2 (2) The commission may administer oaths, issue subpoenas,  
3 and compel the attendance of witnesses and the production of any  
4 papers, books, accounts, documents, statistical analysis, and  
5 testimony. The commission may adopt and promulgate necessary rules for  
6 discovery which are consistent with the rules adopted by the Supreme  
7 Court pursuant to section 25-1273.01;

8 (3) The commission may consider and utilize the provisions  
9 of the Constitution of the United States, the Constitution of  
10 Nebraska, the laws of the United States, the laws of Nebraska, the  
11 Code of Federal Regulations, the Nebraska Administrative Code, any  
12 decision of the several courts of the United States or the State of  
13 Nebraska, and the legislative history of any law, rule, or regulation,  
14 without making the document a part of the record. The commission may  
15 without inclusion in the record consider and utilize published  
16 treatises, periodicals, and reference works pertaining to the  
17 valuation or assessment of real or personal property or the meaning of  
18 words and phrases if the document is identified in the commission's  
19 rules and regulations. All other evidence, including records and  
20 documents in the possession of the commission of which it desires to  
21 avail itself, shall be offered and made a part of the record in the  
22 case. No other factual information or evidence other than that set  
23 forth in this section shall be considered in the determination of the  
24 case. Documentary evidence may be received in the form of copies or  
25 excerpts or by incorporation by reference;

26 (4) Every party shall have the right of cross-examination of  
27 witnesses who testify and shall have the right to submit rebuttal

1 evidence;

2 (5) The commission may take notice of judicially cognizable  
3 facts and in addition may take notice of general, technical, or  
4 scientific facts within its specialized knowledge or statistical  
5 information regarding general levels of assessment within a county or  
6 a class or subclass of real property within a county and measures of  
7 central tendency within such county or classes or subclasses within  
8 such county which have been made known to the commission. Parties  
9 shall be notified either before or during the hearing or by reference  
10 in preliminary reports or otherwise of the material so noticed. They  
11 shall be afforded an opportunity to contest the facts so noticed. The  
12 commission may utilize its experience, technical competence, and  
13 specialized knowledge in the evaluation of the evidence presented to  
14 it;

15 (6) Any person testifying under oath at a hearing who  
16 knowingly and intentionally makes a false statement to the commission  
17 or its designee is guilty of perjury. For the purpose of this section,  
18 perjury is a Class I misdemeanor;

19 ~~(7) The commission shall hear appeals and cross appeals as~~  
20 ~~in equity and without a jury and determine de novo all questions~~  
21 ~~raised in the proceedings upon which the order, decision,~~  
22 ~~determination, or action appealed from is based;~~

23 (7) The commission may determine any question raised in the  
24 proceeding upon which an order, decision, determination, or action  
25 appealed from is based. The commission may consider all questions  
26 necessary to determine taxable value of property as it hears an  
27 appeal or cross appeal;

1           (8) In all appeals, excepting those arising under section  
2 77-1606, if the appellant presents no evidence to show that the order,  
3 decision, determination, or action appealed from is incorrect, the  
4 commission shall deny the appeal. If the appellant presents any  
5 evidence to show that the order, decision, determination, or action  
6 appealed from is incorrect, such order, decision, determination, or  
7 action shall be affirmed unless evidence is adduced establishing that  
8 the order, decision, determination, or action was unreasonable or  
9 arbitrary;

10           ~~(9) Any decision rendered by the commission shall be~~  
11 ~~certified to the parties and, if applicable, to the county treasurer~~  
12 ~~and the official charged with the duty of preparing the tax list.~~  
13 ~~When such decision becomes final, the officials shall correct their~~  
14 ~~records accordingly;~~

15           ~~(10)~~ (9) If the appeal concerns a decision by the county  
16 board of equalization that property is, in whole or in part, exempt  
17 from taxation, the decision to be rendered by the commission shall  
18 only determine the exemption status of the property. The decision  
19 shall not determine the taxable value of the property unless  
20 stipulated by the parties according to subsection (2) of section  
21 77-5017;

22           ~~(11)~~ (10) If the appeal concerns a decision by the  
23 county board of equalization that property owned by the state or a  
24 political subdivision is or is not exempt and there has been no final  
25 determination of the value of the property, the decision to be  
26 rendered by the commission shall only determine the exemption status  
27 of the property. The decision shall not determine the taxable value of

1 the property unless stipulated by the parties according to subsection  
2 (2) of section 77-5017;

3 ~~(12)~~ (11) The costs of any appeal, including the costs  
4 of witnesses, may be taxed by the commission as it deems just, except  
5 costs payable by the appellant pursuant to section 77-1510.01, unless  
6 the appellant is the county assessor or county clerk in which case the  
7 costs shall be paid by the county; and

8 ~~(13)~~ (12) The commission shall deny relief to the  
9 appellant or petitioner in any hearing or proceeding unless a majority  
10 of the commissioners present determine that the relief should be  
11 granted.

12 Sec. 7. Section 77-5017, Revised Statutes Cumulative  
13 Supplement, 2006, is amended to read:

14 77-5017. (1) In resolving an appeal or petition, the  
15 commission may make such orders as are appropriate for resolving the  
16 dispute but in no case shall the relief be excessive compared to the  
17 problems addressed. The commission may make prospective orders  
18 requiring changes in assessment practices which will improve  
19 assessment practices or affect the general level of assessment or the  
20 measures of central tendency in a positive way. If no other relief is  
21 adequate to resolve disputes, the commission may order a reappraisal  
22 of property within a county, an area within a county, or classes or  
23 subclasses of property within a county.

24 (2) In an appeal specified in subdivision ~~(10) or (11)~~  
25 (9) or (10) of section 77-5016 for which the commission determines  
26 exempt property to be taxable, the commission shall order the county  
27 board of equalization to determine the taxable value of the property,

1 unless the parties stipulate to such taxable value during the hearing  
2 before the commission. The order shall require the county board of  
3 equalization to (a) assess such property using procedures for  
4 assessing omitted property, (b) determine such taxable value within  
5 ninety days after the issuance of the commission's order, and (c)  
6 apply interest, but not penalty, to the taxable value as of the date  
7 the commission's order was issued or the date the taxes were  
8 delinquent, whichever is later.

9 (3) A determination of the taxable value of the property  
10 made by the county board of equalization pursuant to subsection (2) of  
11 this section may be appealed to the commission within thirty days  
12 after the board's decision.

13 Sec. 8. Section 77-5020, Revised Statutes Cumulative  
14 Supplement, 2006, is amended to read:

15 77-5020. The commission, subject to rules and regulations,  
16 shall have the power to invalidate or suspend the certificate  
17 issued pursuant to section 77-422 of any county assessor or deputy  
18 assessor who willfully fails or refuses to comply with any order of  
19 the commission. No certificate shall be ~~revoked~~ invalidated or  
20 suspended except upon a ~~proper~~ hearing before the commission.

21 ~~After due notice, if the county assessor certificate of a~~  
22 ~~person serving as county assessor or deputy assessor is revoked, such~~  
23 ~~person shall be removed from office, the office declared vacant, and~~  
24 ~~such person shall not be eligible to hold that office for a period of~~  
25 ~~five years from the date of removal.~~ Any county assessor or deputy  
26 assessor whose certificate has been so ~~revoked~~ invalidated or  
27 suspended may appeal the decision to the Court of Appeals in

1 accordance with section 77-5019.

2 No action shall be brought under this section more than two  
3 years after the date of the act, last date of a series of actions  
4 complained of, or the last date the county assessor or deputy  
5 assessor could have acted to comply, whichever is later.

6 Sec. 9. Section 77-5022, Revised Statutes Cumulative  
7 Supplement, 2006, is amended to read:

8 77-5022. The commission shall annually equalize the assessed  
9 value, special value, or recapture value of all real property as  
10 submitted by the county assessors on the abstracts of assessments and  
11 equalize the values of real property that is valued by the state. The  
12 commission shall have the power to adjourn from time to time until the  
13 equalization process is complete. Meetings held pursuant to this  
14 section may be held by means of videoconference.

15 During its annual meeting, the commission may adopt and  
16 promulgate guidelines, standards, or criteria for the evaluation of  
17 evidence presented to it or actions to be taken on that evidence  
18 pursuant to sections 77-5023 to 77-5028. Guidelines, standards, or  
19 criteria adopted pursuant to this section shall not be considered  
20 rules and regulations subject to the requirements of the  
21 Administrative Procedure Act.

22 Sec. 10. Section 77-5023, Revised Statutes Cumulative  
23 Supplement, 2006, is amended to read:

24 77-5023. (1) Pursuant to section 77-5022, the commission  
25 shall have the power to increase or decrease the value of a class or  
26 subclass of real property in any county or taxing authority or of real  
27 property valued by the state so that all classes or subclasses of real

1 property in all counties fall within an acceptable range.

2 (2) An acceptable range is the percentage of variation from  
3 a standard for valuation as measured by an established indicator of  
4 central tendency of assessment. Acceptable ranges are: (a) For  
5 agricultural land and horticultural land as defined in section  
6 77-1359, sixty-nine to seventy-five percent of actual value; (b) for  
7 lands receiving special valuation, sixty-nine to seventy-five percent  
8 of special valuation as defined in section 77-1343 and ~~sixty-nine to~~  
9 ~~seventy-five~~ ninety-two to one hundred percent of recapture  
10 valuation as defined in section 77-1343; and (c) for all other real  
11 property, ninety-two to one hundred percent of actual value.

12 (3) Any increase or decrease shall cause the ~~indicator of~~  
13 ~~central tendency of assessment utilized~~ level of value determined  
14 by the commission to be at the midpoint of the applicable acceptable  
15 range.

16 (4) Any decrease or increase to a subclass of property shall  
17 also cause the ~~indicator of central tendency utilized~~ level of  
18 value determined by the commission for the class from which the  
19 subclass is drawn to be within the applicable acceptable range.

20 (5) Whether or not ~~an established indicator of central~~  
21 ~~tendency~~ the level of value determined by the commission falls  
22 within an acceptable range or at the midpoint of an acceptable range  
23 may be determined to a reasonable degree of certainty relying upon  
24 generally accepted mass appraisal techniques.

25 Sec. 11. Section 77-5026, Revised Statutes Cumulative  
26 Supplement, 2006, is amended to read:

27 77-5026. Pursuant to section 77-5023, if the commission

1 finds that the level of ~~assessment~~ value of a class or subclass of  
2 real property fails to satisfy the requirements of section 77-5023,  
3 the commission shall issue a notice to the counties which it deems  
4 either undervalued or overvalued and shall set a date for hearing at  
5 least five days following the mailing of the notice unless notice is  
6 waived. The notice unless waived shall be mailed to the county clerk,  
7 county assessor, and chairperson of the county board. At the hearing  
8 the county assessor or other legal representatives of the county may  
9 appear and show cause why the value of a class or subclass of real  
10 property of the county should not be adjusted. A county assessor or  
11 other legal representative of the county may waive notice of the  
12 hearing or consent to entry of an order adjusting the value of a  
13 class or subclass of real property without further notice. At the  
14 hearing, the commission may receive testimony from any interested  
15 person.

16 Sec. 12. Section 77-5028, Revised Statutes Cumulative  
17 Supplement, 2006, is amended to read:

18 77-5028. After a hearing conducted pursuant to section  
19 77-5026, the commission shall enter its order based on information  
20 presented to it at the hearing. The order of the commission shall be  
21 sent by certified mail to the county assessor and by regular mail to  
22 the county clerk and chairperson of the county board on or before May  
23 15 of each year or the date determined by the Property Tax  
24 Administrator if an extension is ordered pursuant to section 77-1514,  
25 unless the offices of the commission are closed, then the order of the  
26 commission shall be sent by the end of the next day the commission's  
27 offices are open. The order shall specify the percentage increase or

1 decrease and the class or subclass of real property affected or the  
2 corrections or adjustments to be made to ~~the class or subclass~~ each  
3 parcel of real property in the class or subclass affected. The  
4 specified changes shall be made by the county assessor to each ~~item~~  
5 parcel of real property in the county so affected

6 Sec. 13. Original sections 77-5003 and 77-5011, Reissue  
7 Revised Statutes of Nebraska, and sections 25-1901, 77-1504,  
8 77-1507.01, 77-5016, 77-5017, 77-5020, 77-5022, 77-5023, 77-5026, and  
9 77-5028, Revised Statutes Cumulative Supplement, 2006, are repealed.

10 Sec. 14. The following section is outright repealed: Section  
11 77-5014, Reissue Revised Statutes of Nebraska.